

EXHIBIT 1

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**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

EDWARD PEÑA and BRANDON
MILLER, *individually and on behalf
of persons similarly situated,*

Plaintiffs,

v.

INTERNATIONAL MEDICAL
DEVICES, INC., MENOVA
INTERNATIONAL, INC., GESIVA
MEDICAL, LLC, JAMES J. ELIST,
M.D., A MEDICAL
CORPORATION, AND DR.
JAMES ELIST,

Defendants.

Case No. 2:22-cv-03391-SSS (RAOx)

**DECLARATION OF
AMY E. TABOR**

Date: September 29, 2023

Time: 2:00 pm

Crtm: 2 (via Zoom video conference)

Judge: Hon. Sunshine S. Sykes

I, Amy E. Tabor, am counsel for Plaintiffs in this proceeding. I am over 18 years of age and competent to make the following statement. All of the statements below are based on my personal knowledge.

1. On September 9, 2022, Plaintiffs served Requests for Production, Interrogatories, and Requests for Admission on Defendants.

1 2. Defendants served written objections and responses to this discovery on
2 October 10, 2022. Defendants objected to any discovery on the grounds that a Rule
3 26 conference had not taken place.

4 3. On April 3, 2023, I spoke to Amir Nassihi, counsel for Defendants, by
5 telephone regarding Plaintiff's discovery requests. For the first time on that
6 telephone call, Mr. Nassihi raised the issue of an arbitration agreement signed by
7 Mr. Pena. Mr. Nasshi sent me a "Physician-Patient Arbitration Agreement" signed
8 by Mr. Pena and "BHSPSC" later that day by email. To facilitate discovery in the
9 case, we agreed that Defendants' participation in the Rule 26 conference and related
10 activity such as service of disclosures, filing the Joint Report, meeting and conferring
11 about discovery responses, and entry of the protective order would not constitute a
12 waiver of any right to arbitrate.

13 4. On April 11, 2023, the parties conducted a Rule 26 conference by
14 telephone.

15 5. On May 5, 2022, Defendant International Medical Devices, Inc. ("IMD")
16 served Requests for Production and Interrogatories on Mr. Pena.

17 6. The parties exchanged Initial Disclosures on May 8, 2023.

18 7. On May 11, 2023, Defendants served amended responses to Plaintiff's
19 written discovery. Defendants stated that they would produce certain confidential
20 documents subject to a protective order once the parties agreed to the terms of a
21 protective order.

22 8. Mr. Pena responded to IMD's written discovery on June 5, 2023.

23 9. On July 5, 2023, Plaintiff's counsel sent Evan Montgomery, counsel for
24 Defendants, a list of proposed search terms intended to help locate responsive
25 documents and filter out non-responsive documents in Defendants' Electronically
26 Stored Information ("ESI").
27
28

1 10. On July 7, 2023, I met and conferred with Mr. Montgomery by telephone
2 regarding these proposed search terms. Mr. Montgomery stated that he would
3 consult with his client and technical experts and respond to Plaintiff's search term
4 proposal.

5 11. The Magistrate Judge approved the parties' agreed protective order on
6 August 4, 2023.

7 12. On August 4, 2023, I sent a letter to Defendants' counsel pursuant to Local
8 Rule 37-1 identifying disputed discovery issues and setting forth Plaintiff's position
9 on each issue and request.

10 13. On August 21, 2023, I met and conferred by telephone with Amir Nassihi,
11 Jennifer Stevenson, and Evan Montgomery regarding the issues in dispute. On that
12 call, we were able to tentatively resolve a number of issues, subject to confirmation
13 by Mr. Mallow, also counsel for Defendants, who was out of the country on vacation.
14 However, Defendants' counsel stated that Defendants would not produce the
15 documents they had previously agreed to produce subject to the protective order, nor
16 would they make any other formal production in response to Plaintiff's discovery
17 requests, while their Motion to Compel Arbitration was pending.

18 14. Later that day, Mr. Montgomery sent me by email Defendants'
19 counterproposal regarding ESI search terms.

20 15. On August 22, 2023, I spoke to Mr. Nassihi, Ms. Stevenson, and Mr.
21 Montgomery again by telephone. On that call, we agreed that Defendants'
22 counterproposal regarding ESI search terms was an appropriate starting point,
23 subject to a validation process to ensure the search terms were neither over-inclusive
24 nor under-inclusive. We continued to discuss my letter of August 4 and reached
25 additional tentative agreements to narrow the issues in dispute. Defendants
26 continued to take the position that they would make no formal production while their
27 Motion to Compel Arbitration was pending.

1 I declare under penalty of perjury under the laws of the United States of
2 America that the foregoing is true and correct.

3
4 Dated: September 5, 2023

/s/ Amy E. Tabor
Amy E. Tabor